

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

KEVIN CHRISTOPHER MICHEAL TRIPP, Petitioner, vs. BOB DOOLY, DAREN YOUNG, THE ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA, Respondents.	4:19-CV-04162-LLP ORDER GRANTING PETITIONER'S MOTION TO APPEAL WITHOUT REPAYMENT OF FEES
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Petitioner, Kevin Christopher Micheal Tripp filed a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. 1. This Court adopted the Magistrate Judge's Report and Recommendation in full. Doc. 8. Further, this Court denied to issue a certificate of appealability and denied Tripp's motion to proceed in forma pauperis as moot. *Id.* at 2. Judgment was entered and Tripp's application for a writ of habeas corpus was dismissed without prejudice. Doc. 9.

Tripp filed a notice of appeal, Doc. 13, a motion to appeal without repayment of fees, Doc. 11, and provided the Court with his prisoner trust account, Doc. 12. Because this Court denied Tripp's original motion to proceed in forma pauperis as moot, the Court will now address his motion to appeal without repayment of fees on the merits.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the PLRA do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001). To determine whether a

habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S.C. § 1915(a)(1), (3).

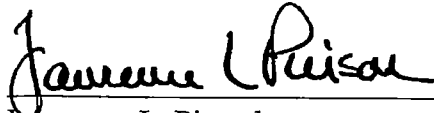
Tripp's prisoner trust account report indicates that he has average monthly deposits of \$30.00 and an average monthly balance of *negative* \$20.84. Doc. 12. Tripp's notice of appeal, though arguably misguided, appears to be taken in good faith. Tripp has insufficient funds to pay the \$505.00 appellate filing fee, thus his motion to appeal without repayment of fees, Doc. 11, is granted.

IT IS ORDERED:

1. That Tripp's motion to appeal without repayment of fees, Doc. 11, is granted.

Dated this 19th day of December, 2019.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

MATTHEW W. THELEN, CLERK

